No. 15-145

IN THE

Supreme Court of the United States

HUSKY INTERNATIONAL ELECTRONICS, INC.,
Petitioner,

—v.—

DANIEL LEE RITZ, JR.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICI CURIAE* PROFESSORS RICHARD AARON, JAGDEEP S. BHANDARI, SUSAN BLOCK-LIEB, JESSICA GABEL CINO, LINDA E. COCO, BRUCE GROHSGAL, EDWARD JANGER, GEORGE W. KUNEY, C. SCOTT PRYOR, THERESA J. PULLEY RADWAN, MICHAEL D. SOUSA AND LAURA M. SPITZ IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

The *amici*[2] are a group of law professors who have devoted their careers to the study and teaching of bankruptcy law. The *amici* represent no institution, group, or association. Their interest is to underscore that the Bankruptcy Code (the "Code") has specific provisions relating to fraudulent transfers, and that whether a debt arising from such a transfer is to be discharged should be determined in light of the text, history, and overall structure of such provisions.

The *amici* are keenly interested in this appeal because the Circuit Courts of Appeals, including the court below, in addressing whether fraudulent transfers are covered by the "actual fraud" provision of section 523(a)(2)(A) of the Code, have mistakenly assumed that the controlling question is whether a false representation is an essential

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[1] Pursuant to Rule 37 of the Rules of this Court, the *amici* file this brief with the written consent of both parties, which are on file with the Clerk. No person or entity including the *amici* or their counsel made a monetary contribution for the preparation or submission of this brief.

[2] The *amici* are the following law professors who teach at the law schools indicated next to their names: Richard Aaron, University of Utah, S.J.Quinney College of Law; Jagdeep S. Bhandari, Wake Forest University School of Law; Susan Block-Lieb, Fordham Law School; Jessica Gabel Cino, Georgia State University College of Law; Linda E. Coco, Barry University School of Law; Bruce Grohsgal, Widener University Delaware Law School; Edward Janger, Brooklyn Law School; George W. Kuney, University of Tennessee College of Law; C. Scott Pryor, Campbell University School of Law; Theresa J. Pulley Radwan, Stetson University College of Law; and Michael D. Sousa, University of Denver Sturm College of Law. *Amicus* Laura M. Spitz devotes full time to her duties as Vice Provost of Cornell University, and thus is not currently a law teacher.

element of that section's "actual fraud" provision. However, the *amici* respectfully submit that such question actually never arises because the discharge of fraudulent transfer debt is *exclusively* controlled by section 727(a) of the Code. Under the specific provisions of section 727(a) regarding fraudulent transfers, such debt is discharged *unless* incurred within one year before the bankruptcy filing. Further, both the plain meaning of that statute and a century of practice show that the "actual fraud" provision of section 523(a)(2)(A) was not enacted to address, much less to except, fraudulent transfer debt from the discharge ultimately received by a chapter 7 debtor. Rather, Congress made a deliberate policy choice that section 727(a) governs the discharge of such debt.

SUMMARY OF ARGUMENT

The *amici* submit that asking whether a misrepresentation is an essential element of an "actual fraud" under section 523(a)(2)(A) disguises Petitioner's false presupposition, namely, that a debt arising from a transfer made to hinder, delay or defraud creditors is capable of being within the scope of section 523(a)(2)(A)'s "actual fraud" provision and thus excepted from a discharge later received by a chapter 7 debtor under section 727(a). That false presupposition leads to an *unnecessary* inquiry whether a misrepresentation is required for a fraudulent transfer to constitute an "actual fraud" under section 523(a)(2)(A). The *amici* would avoid that entire inquiry They submit that the "actual fraud" provision is wholly inapplicable to fraudulent transfer debt. This is because the discharge of a debt arising from a transfer made to hinder, delay, or defraud creditors is exclusively

regulated by sections 727(a) and 727(b), which discharge such debt, unless incurred within one year before the bankruptcy.

Simply stated, Petitioner and its allies attempt to use the "actual fraud" provision of section 523(a)(2)(A) to circumvent a debtor's entitlement to a discharge of fraudulent transfer debt occurring *outside* the statutory one year period. That circumvention is impermissible as a matter of statutory construction, and violates century-old practice and a deliberate congressional policy, for the discharge of such debt.

To begin, there are compelling arguments which make it evident that fraudulent transfer debt is governed exclusively by section 727(a), and is outside the scope of section 523(a)(2)(A).

First, the plain meaning of section 727(a) establishes that only *it* governs the discharge of fraudulent transfer debt, that is, debt arising from transfers to "hinder, delay or defraud" creditors, thereby preventing creditors from reaching the debtor's assets to satisfy their claims.

Second, fraudulent transfer debt, unlike other debts, does not arise from the *particularized* injury incurred by *one* creditor. Rather, fraudulent transfers injure *all* creditors, each of whom is blocked by the transfer from reaching the debtor's property. In light of the central principle of the Code for equality of distribution to similarly situated creditors, section 727(a) should be understood as the sole basis governing the discharge of fraudulent transfer debt. Section 523(a)(2)(A), dealing with injury to a single creditor, does not fit within the Code's structure for the discharge of such debt.

Third, by express Congressional design, section 523(a)(2)(A), *unlike* section 727(a), does not address, or even mention, debts arising from transfers to "hinder, delay, or defraud creditors." It deals with *other* sorts of fraud.

Fourth, to read section 523(a)(2)(A) as in any way applying to fraudulent transfer debts creates an impermissible contradiction with, or redundancy of, section 727(a).

Fifth, the specific provisions of section 727(a) prevail over the general ones of section 523(a)(2)(A).

Sixth, "actual fraud," as used in section 523(a)(2)(A), does not apply to fraudulent transfers because of its threshold requirement that property be *obtained from a* creditor by fraud, which is not met in this case.

Next, most fundamentally, it is a matter of Congressional policy and statutory text, extending for over a century, that fraudulent transfer debts outside the reach-back period of section 727(a)(2) and its predecessors are to be discharged. Petitioner's attempt to bring fraudulent transfers within the scope of section 523(a)(2)(A) based on Congress' codification of *Neal v. Clark*, 95 U.S. 704 (1877) is simply misplaced because *Neal v. Clark* is not a fraudulent transfer case.

Indeed, there is a compelling policy reason why fraudulent transfer debt is governed by section 727(a), which affects the claims of *all* creditors, and cannot be made nondischargeable by a single creditor under section 523(a)(2)(A): fraudulent transfers hide the debtor's assets from *all* creditors, not just from a single creditor. Thus, fraudulent transfer debt that arises within section 727(a)'s one year period results in a denial of

discharge so as to enable *all* creditors to pursue their remedies post bankruptcy, rather than only a single creditor.To allow a single creditor to except its claim alone from the discharge discriminates against the remaining creditors. Of course, that Congress elected the one year period is entirely a matter of its legislative discretion. The precedents of this Court establish that such a Congressional policy choice must be preserved by this Court, even were it to disagree with that policy.

Finally, based on the foregoing, it becomes clear that the principal cases relied on by Petitioner are in error. Those cases fall prey to an erroneous pre-conclusion that fraud of any kind must *always* be punished by denial of discharge. Congress, however, has imposed that consequence only for a fraudulent transfer that occurs within one year before bankruptcy, and if this policy is disagreeable, the solution lies with Congress.

Consequently, the *amici* respectfully ask this Court to uphold the result reached by the Court of Appeals below, namely, that Respondent's debt, if any, for making the transfers in suit cannot be excepted under the "actual fraud" provision of section 523(a)(2)(A) from the discharge he may ultimately receive. However, the reasons advanced by the *amici* to support that result are profoundly different from those employed by the court below.

ARGUMENT

POINT I

DISCHARGE OF DEBT ARISING FROM A FRAUDULENT TRANSFER IS GOVERNED EXCLUSIVELY BY SECTION 727(a)

A. The scope and plain meaning of Code section 727(a)

1. Section 727(a) provides for the discharge of fraudulent transfer debt unless incurred within one year of bankruptcy

Section 727(a), on its face, discharges fraudulent transfer debt incurred more than one year before bankruptcy. Section 727(a)'s introductory clause broadly directs that "[t]the court *shall* grant the debtor a discharge" (emphasis added) and is followed by 12 numbered subsections that specify grounds for denial of the discharge. Clause (2) of section 727(a) denies a discharge if a transfer was made "with intent to hinder, delay or defraud a creditor" of "(A) property of the debtor, within one year before the date of the filing of the petition." This provision in clause (2)(A) for denial of a discharge would not be required if the broad discharge under section 727(a) did not in the first instance discharge all debt. This Court employed like reasoning in *Pennsylvania Dep't of Public Works v. Davenport*, 495 U.S. 552, 562 (1990) ("Had Congress believed that restitution obligations were not 'debts' giving rise to 'claims,' it would have had no reason to except such obligations from discharge in section 523(a)(7)."). See also *Moriyama v. Allen*, 13 F.2d 117, 118 (9th

Cir. 1926) ("By declaring that a fraudulent transfer within the four-month period is a bar to a discharge, Congress by implication declared that a transfer prior to that date will have no such effect.").

Accordingly, section 727(a) facially discharges fraudulent transfer debt where it is incurred beyond the one year reach-back period.

2. Read together, the plain meaning of sections 727(a) and 727(b) demonstrates that section 523(a)(2)(A) does not cover fraudulent transfer debt

The plain meaning of interacting subsections (a) and (b) of section 727 shows that section 523(a)(2)(A) is *not* a basis to except fraudulent transfer debt from a discharge, and Petitioner's reliance on section 727(b) is misplaced. First, section 727(a) expressly provides for granting a discharge to the debtor unless he or she made a fraudulent transfer within one year before the bankruptcy filing. Then, immediately thereafter, section 727(b) states that a discharge discharges all of the debtor's pre-petition debt "[e]xcept as provided in section 523." Clearly, however, Congress did not intend the general section 523 exception provided by section 727(b) to nullify its specific provisions governing the discharge of fraudulent transfer debt under the immediately preceding section 727(a). See *Radlax Gateway Hotel, LLC v. Amalgamated Bank*, 132 S.Ct. 2065, 2071 (2012) ("the specific governs the general"). Accordingly, Congress clearly understood section 523(a)(2)(A) to except from a discharge only debts *other than* fraudulent transfer debts. It would make no sense to read section 523(a)(2)(A) and its inclusion in section 727(b) in any other way.

B. Because section 523(a)(2)(A), unlike sections 548 and 727, does not address debts arising from transfers to "hinder, delay, or defraud" a creditor, it is presumed that Congress acted intentionally to exclude such debt from section 523(a)(2)(A)

Section 727(a) expressly addresses the discharge (or denial of discharge) of debts to "hinder, delay, or defraud" creditors. This identical phrasing is also used in section 548(a)(1)(A) of the Code to provide for the avoidance of fraudulent transfers, and in section 522(o)(4) to reduce the amount of a debtor's exempt property for filing for bankruptcy "with intent to hinder, delay, or defraud a creditor" within 10 years prior to bankruptcy. Congress' use of wholly different language, namely, "actual fraud," in section 523(a)(2)(A) obviously refers to something *other than* fraudulent transfers to hinder, delay, or defraud creditors.

As this Court has stated, "where Congress includes particular language in one section of a statute but omits it in another . . . it is generally presumed that Congress acts intentionally in the disparate . . . exclusion." *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993); accord *Curtis v. United States*, 511 U.S. 485 (2001); *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 538 (1994); *Russello v. United States*, 464 U.S. 16. 23 (1983). The omission of the words "hinder, delay, or defraud" from section 523(a)(2)(A) controls this case because those are words of art used to signify fraudulent transfers and they fail to appear in that provision. Accordingly, section 523(a)(2)(A) should not be read to subvert the discharge provisions of section 727(a) governing transfers to hinder, delay or defraud creditors.

C. Petitioner's reading of section 523(a)(2)(A) renders it either contradictory with, or redundant of, section 727(a)

Petitioner attempts to use the "actual fraud" provision of section 523(a)(2)(A) to defeat a debtor's entitlement to a section 727(a) discharge of fraudulent transfer debt. See *McClellan v. Cantrell*, 217 F.3d 890, 892 (7th Cir. 2000) (hereinafter, "*McClellan*") (explicitly acknowledging the creditor's effort to use section 523(a)(2)(A) to prevent the discharge of a fraudulent transfer debt under section 727(a)); *Cf.*, *amicus* brief filed in this case by the National Association of Bankruptcy Trustees ("NABT") candidly conceding that because the transfers at issue in this case were made more than one year before the bankruptcy filing, a bankruptcy trustee or creditors would be unable to block the discharge of such debt under section 727(a)—because "that relief was not available." See NABT's brief at 11-12. Yet, NABT nevertheless asks this Court to give, through section 523(a)(2)(A), the very relief it acknowledges to be expressly precluded by section 727(a).

Moreover, reading section 523(a)(2)(A) as covering fraudulent transfer debt would make it inconsistent with section 727(a). It would defeat section 727(a)'s provision for discharging such debt incurred prior to the one year period. It is, of course, a fundamental principle that statutes are to be construed consistently and harmoniously with each other. *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (A court must "fit, if possible, all parts [of a statute] into an harmonious whole.").

NABT's only justification for letting section 523(a)(2)(A) contradict section 727(a) is speculation that debtors will defer their bankruptcy filings until at least one year after making fraudulent transfers in order to "block their chapter 7 trustees and creditors from objecting to their general discharge under section 727(a)(2)(A) of the Code." NABT's brief at 4. It is doubtful, however, that debtors who are individuals are sufficiently knowledgeable of the bankruptcy law to make a calculated deferral of a bankruptcy filing, or otherwise able to defer a needed bankruptcy filing for more than a year. In any event, NABT's concern should be addressed by it to the Congress, not this Court.

Alternatively, if Petitioner's reading of section 523(a)(2)(A) does not contradict section 727(a), then that provision becomes superfluous for the following reason. If the debtor makes an intentional fraudulent transfer and the debtor does not ultimately receive a discharge, an order making such debt nondischargeable under section 523(a)(2)(A) as an "actual fraud" will not have been needed because the debt would survive the bankruptcy on its own accord as undischarged debt. But statutes should not be construed so as to be unnecessary or redundant. See *Mackey v. Lanier Collection Agency and Service, Inc.*, 486 U.S. 825, 837 (1988) ("[W]e are hesitant to adopt an interpretation of a Congressional enactment which would render superfluous another portion of the same law.").

Significantly, while the Fifth Circuit Court of Appeals in the present case did not base its holding on section 727(a), that court expressly suggested that fraudulent transfer debt *is* governed by section 727(a), not by section

523(a)(2)(A). In this regard, the Fifth Circuit correctly observed:

> We also note another provision of the Bankruptcy Code, Section 727(a)(2), excepts from discharge certain fraudulent transfers, 11 U.S.C. sec 727(a)(2)(A) ("The court shall grant the debtor a discharge, unless . . . the debtor, with intent to hinder, delay, or defraud a creditor . . . has transferred . . . property of the debtor . .). *It would appear odd, at the very least, for Congress to have intended the "actual fraud" provision cover fraudulent transfers, when there is another provision directly addressing such transfers. See United States v. $92,203.00 in U.S. Currency*, 537 F.3d 504, 509 (5th Cir. 2008) ("We are to read a statute as a whole, so as to give effect to each of its provisions without rendering any language superfluous.")

Id. at 320-21. (emphasis added). The Fifth Circuit, however, went on to rule only on whether a misrepresentation is a required element of an "actual fraud."

Accordingly, section 523(a)(2)(A) is not a vehicle for barring the discharge of fraudulent transfer debt.

D. The specific provisions of section 727(a) prevail over the "actual fraud" general provision in section 523(a)(2)(A)

Petitioner's position that a debt arising from a transfer to hinder, delay, or defraud, specifically described in section 727(a), may be excepted from

a discharge under the general fraud section 523(a)(2)(A), sharply conflicts with the well-established canon of statutory construction that "the specific governs the general." *Radlax Gateway Hotel, LLC*, 132 S.Ct. at 2071 (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992)). Moreover, this principle would not change even if the general statute were enacted more recently than the specific one. *Radzanower v. Touché Ross & Co.*, 426 U.S. 148, 153 (1976) ("It is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum.").

Applying this canon is particularly appropriate in this case. As is discussed *infra*, Congress' specific provision for the discharge of fraudulent transfer debt reflects its strong policy formulated many years ago and re-enacted thereafter in each of its major modifications of the bankruptcy law. In each instance, Congress made it clear that it intended that the discharge of fraudulent transfer debt be dealt with at the discharge stage of the case, and that the debtor should be freed of such debt unless it was incurred within one year before the bankruptcy filing. As this Court made clear in *Radlax*, it is "particularly true" that "the specific governs the general" where, as here, "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions," *Radlax*, 132 S.Ct. at 2071, quoting *Varity Corp. v. Howe*, 516 U.S. 489, 519 (1996) (Thomas, J., dissenting).

Thus, even if section 523(a)(2)(A)'s general language could be read as broad enough to cover fraudulent transfer debt, it should nevertheless be

construed as being superseded by the specific provisions of section 727(a). See *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208 (1932) (citing *United States v. Chase*, 135 U.S. 255, 260 (1890)) (A "general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."). Section 523(a)(2)(A) is just not a vehicle for the nondischarge of fraudulent transfer debt.

E. "Actual Fraud" as used in section 523 does not apply to fraudulent transfers

There is a fundamental difference between fraudulent transfers and other types of fraud: a fraudulent transfer does not use deceit to trick people out of their money, property, or services; rather, it surreptitiously keeps a debtor's assets away from the reach of his or her creditors. A fraudulent transfer is *sui generis*, and must be understood as differing from other frauds. That is why the special sections of the Code that are devoted to fraudulent transfers (sections 548 and 727(a)) do not address other kinds of fraud, and it is also why, correlatively, the special section of the Code devoted to other frauds (section 523(a)(2)(A)) does not address fraudulent transfers.

1. Section 523(a)(2)(A) applies only where property is "obtained" from a creditor

a. The plain meaning of the statute is that property be "obtained" from a creditor

Petitioner candidly acknowledges that section 523(a)(2)(A) applies where a debtor "*received* property" belonging to its creditor. Pet Op Br 50.

(emphasis in original) Moreover, perhaps unwittingly, Petitioner actually concedes that "[s]ection 727(a)(2) applies only where the debtor diminishes the bankruptcy estate by *transferring property away from* the reach of its creditors." *Id.* Effectively, this mirrors the plain text of section 523(a)(2)(A), where the "actual fraud" provision applies only if *something* of the creditor's (money, property, services, or credit) has been "obtained by" the debtor. Because in a fraudulent transfer *nothing* is obtained from the creditor, and only involves a transferor's own property, section 523(a)(2)(A) is inapplicable.

In this case, *nothing* was obtained from the transferor's creditor by means of the transfers made by the debtor. What Petitioner describes as the Respondent's wrongful conduct consists of a classic fraudulent transfer—allegedly draining funds out of a company and transferring them to other entities to place them beyond the reach of a creditor. Nothing of the aggrieved creditor, Husky, was obtained; what was obtained in this case was money of the transferor.[3]

Dictionary definitions reinforce this conclusion. This Court relies on such definitions for the mean-

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[3] Even if section 523(a)(2)(A) applied to a fraudulent transfer debt, such debt could not be excepted under that provision from the discharge the debtor may ultimately receive in this case. This is because the goods purchased from the creditor in this case were not "obtained by . fraud," as required for a debt to be nondischargeable under that provision. As stated by the Fifth Circuit below, purchases of those goods were made over several years pursuant to a written contract, and the Petitioner "had not established that [Respondent] perpetuated an 'actual fraud' on [Petitioner]." *In re Ritz*, 787 F.3d 312, 314.

ing of words. See. *e.g.*, *Baker Botts L.L.P. v. Asarco LLC*, 135 S.Ct. 2158, 2165 (2015); *Bullock v. BankChampaign*, 133 S.Ct. 1754, 1758 (2013). The *English Oxford* dictionary offers the following as the primary definition of the word "obtain": "To come into possession of; to procure; acquire or secure." *Black's Law Dictionary* likewise defines "obtain" as meaning "[t]o bring into one's own possession; to procure." Here, Respondent never 'came into possession' or 'procured' or 'acquired' anything of Husky's.

As aptly stated in *In re Glunk*, 343 B.R. 754 (Bankr. E.D. Penn. 2006), in dismissing a proceeding to except a debt from a discharge for a failure to allege that the debtor obtained anything from his creditor:

> The plain language of the statute unambiguously requires, as a threshold matter, that something of value . . . be transferred to the debtor *from the creditor* to sustain a claim under section 523(a)(2)(A).

Id. at 758, citing *In re Rountree*, 330 B.R. 166, 171 (E.D. Va. 2004) (emphasis added). Accord, *Magten Asset Management Corp. v. Paul, Hastings, Janofsky & Walker, LLP*, 2007 WL 129003 at *2 (D.Del 2007); 4 *Collier on Bankruptcy*, para 523.08[1][a] at p. 523-43. (16th ed.).

Petitioner's contention that the "actual fraud" provision covers fraudulent transfer debt invites this Court to disregard the threshold requirement of section 523(a)(2)(A) that something be "obtained" from the debtor's creditor. This is because Petitioner's lengthy discussion of the common law meaning of actual fraud, Pet Op Br 18-32, like that of its *amici* supporters, does not address the

particular meaning and specific treatment of fraud in the context of the discharge of fraudulent transfer debt under section 727(a) and its numerous predecessors enacted by Congress over more than the last 100 years. Petitioner's presentation boils down to an argument that because a transferor commits a fraud by fraudulently transferring property, such a fraud necessarily falls within the "actual fraud" provision. This conclusory contention, however, is faulty because (among other reasons) it disregards the threshold coverage requirement of section 523(a)(2)(A) that property be "obtained" from the debtor's creditor. Petitioner's argument that "Actual Fraud is Any Intentional Fraud," Pet Op Br 20, utterly fails to be cognizant of section 727(a)'s specific and controlling treatment of fraudulent transfer debt.

b. The historical understanding of fraudulent transfers has always been that they involve transfers of property of the debtor, not obtaining property from a creditor

Historically, fraudulent transfers under the bankruptcy laws have *never* been understood as addressing a debtor wrongfully obtaining property *from* a creditor, which section 523(a)(2)(A) addresses. Rather, they have been understood as transfers involving the *debtor's* own property, designed to hinder, delay, or defraud his or her creditors by placing his or her own property beyond their reach. See *Thomson v. Hanson*, 168 Wash.2d 738, 744 (Wash. *en banc*. 2009) ("In general, a fraudulent transfer occurs where one entity transfers an asset to another entity, with the

effect of placing the asset out of the reach of a creditor with either the intent to delay or hinder the creditor or with the effect of insolvency on the part of the transferring entity."). That, of course, is the situation addressed by section 727(a).

Through the ages, a fraudulent transfer was understood as a transfer of property by a debtor to shield his assets from creditors, not to obtain property from his creditor Fraudulent transfer law originated in English law at least as early as the Statute of Elizabeth over 400 years ago to deal with transfers by a debtor to "hinder, delay, or defraud" creditors so as to place his own property beyond the reach of his creditors. That statute, as understood in the 1601 opinion in *Twyne's* case, 3 Co. Rep. 80a (Star Chamber 1601), was designed to provide a remedy to an unpaid creditor to reach property *of the debtor* that was transferred by the debtor in order to prevent his creditor from collecting a judgment by executing against his property.

Accordingly, section 523(a)(2)(A) is not a basis for excepting a fraudulent transfer debt from the discharge that may ultimately be received by a transferor, a transferee, or other person who may be liable on account of such a transfer.

2. Congress did not intend for transferors and transferees to have different discharge consequences

Congress intended that the test for determining whether a fraudulent transfer debt is to be discharged should be the same for the transferor and the transferee. By its plain text, section 727(a) covers the discharge of all manner of fraudulent transfer debt, whether incurred by the transferor or a transferee who intends to "hinder,

delay, or defraud a creditor." Specifically, a transferee who intentionally "concealed" property that became part of his or her estate upon receiving it from the transferor, is denied a discharge under section 727(a) because of such conduct *only* if such concealment occurred within one year before the bankruptcy.

Moreover, where an intentional fraudulent transfer has been avoided pursuant to section 548(a)(1)(A), the transferee, as the "initial transferee," is obligated by section 550(a)(1) to return the transferred property or its value. A "mediate" (subsequent) transferee incurs a like obligation under section 550(a)(2). A transferee who intentionally participates in a fraudulent transfer thereby incurs a debt that is integral to the fraud. As such, the transferee's debt, like that of the transferor, is covered by the discharge provisions of section 727(a).

Contrariwise, *McClellan,* discussed in depth in Point III *infra,* asserts in conclusory fashion that, just as a transferor's fraudulent transfer creates a "new debt" that differs from his earlier debt to his creditor, the *transferee* likewise incurs a "new debt" as "his accomplice in fraud." However, that court concluded, erroneously, that because the debts of the transferor and transferee based on fraud were *new* debts, they were nondischargeable under section 523(a)(2)(A). *McClellan*, 217 F.3d at 895. *McClellan* got it wrong. These new debts constituted fraudulent transfer debts, and their discharge was governed exclusively by section 727(a) for the reasons offered by this brief. Because they were new debts cannot by means of section 523(a)(2)(A) change their character as fraudulent transfer debts covered by section 727(a) into nondischargeable debts under section 523(a)(2)(A).

Additionally, a transferee is no more culpable in participating in such transfer than is the transferor in making the transfer Because the transferor is discharged under section 727(a) from such debt incurred more than one year before the bankruptcy, Congress could not have intended to deny a discharge to a transferee under the same circumstances even though a transferee is no more culpable than the transferor. Congress would not have provided for the discharge of the transferor's debt and at the same time imposed the harsh consequences of nondischargeability on others for conduct of like quality.

Moreover, the appellate courts that have addressed this issue have generally held that a creditor does not have a cause of action against a person for aiding and abetting the making of a fraudulent transfer. See *Duell v. Brewer*, 92 F.2d 59, 61 (2d Cir. 1937) (per L. Hand, J.) ("Moreover, courts have generally held as to fraudulent conveyances that a person who assists another to procure one, is not liable in tort to the insolvent's creditors."); *Magten Asset Management Corp.*, 2007 WL 129003 at *3. See also *Freeman v. First Union Nat. Bank*, 865 So.2d 1272, 1273 (Fla. Sup. Ct. 2004) (answering a question certified by the 11th Circuit Court of Appeals); *Mack v. Newton*, 737 F.2d 1343, 1357-58 (5th Cir. 1984); *Warne Investments, Ltd. v. Higgins*, 219 Ariz. 186, 196-97 (Ariz. Ct. of Appeals 2008); *Mann v. GTCR Goldner Rauner, L.L.C.*, 483 F.Supp. 2d 884, 918 (D.Ariz. 2007). Moreover, even if the Court were to reject the prevailing rule that a person does not incur liability for aiding and abetting a fraudulent transfer, the debt resulting from such action

would nevertheless be discharged under section 727(a) because, as here, it arose more than one year before the bankruptcy.

Accordingly, the discharge of debt of a transferor, a transferee and of any other person sustaining liability for a role in a fraudulent transfer, is governed exclusively by section 727(a).

POINT II

IT IS ESTABLISHED CONGRESSIONAL POLICY TO DISCHARGE FRAUDULENT TRANSFER DEBTS OUTSIDE THE ONE YEAR REACH-BACK PERIOD OF SECTION 727(a)

A. The discharge provisions of section 727(a) represent a long-standing policy choice by Congress

The discharge of fraudulent transfer debt was not new to the 1978 Code. Section 727(a) reflects a policy choice made by Congress over 100 years ago, and repeatedly reaffirmed since then. The predecessor of section 727(a), enacted in 1903 as section 14b(4) of the Bankruptcy Act of 1898, provided for the discharge of fraudulent transfer debt that arose prior to a four month reach-back period. See Bankruptcy Act of 1898, Pub. L. No. 62, section 14b, 30 Stat. 550 (amended 1903) (A discharge shall be granted unless the debtor "(4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred . . . any of his property with intent to hinder, delay, or defraud his creditors."). See *Moriyama*, 13 F.2d at 118 (applying former section 14b(4)'s four month reach-back provision).

Prior to the 1903 amendment, the Bankruptcy Act of 1898 had no provision requiring the denial of a discharge because of the debtor's incurrence of fraudulent transfer debt, and section 14b of the 1898 Act enabled the debtor to obtain a discharge of all debt, unless the debtor, during the bankruptcy, concealed property of the estate from the trustee, or fraudulently concealed his true financial condition from the trustee. The 1898 Act, moreover, limited the exception from a discharge based on fraud to those cases in which a *judgment* was already issued against the debtor on a cause of action based on fraud.

The liberal provisions of the 1898 Act, enabling the debtor easily to obtain a discharge from debts incurred by reason of fraud, led to a widespread reaction in the creditor community calling for Congress to amend the bankruptcy discharge provision. Some creditors asserted that the bankruptcy law went too far helping debtors, and that the ease with which debtors obtained broad discharges encouraged commercial dishonesty. See Charles Jordan Tabb, *The Historical Evolution of the Bankruptcy Discharge,* 65 Am. Bankr. L. J. 325, 366 (1991) (summarizing the criticism of the original section 14b discharge provision of the 1898 Act). Congress responded five years later by the enactment in 1903 of amendments to the 1898 Bankruptcy Act, which included new section 14b(4) providing for a four month reach-back period. Congress' purpose in enacting the 1903 amendment was to "stamp out" such abuse of the bankruptcy system; its 1902 bankruptcy bill would have refused a discharge for "making a fraudulent transfer of property." See 35 Cong. Rec. H6940 (June 17, 1902). Congress, however, in its

judgment, did not view as abusive the discharge of fraudulent transfer debts incurred more than four months before bankruptcy.

After enacting the 1903 provisions for discharge of fraudulent transfer debts, Congress addressed such debts in 1926 by lengthening the reach-back period under section 14b(4) to one year. See 67 Cong. Rec. H7677 (April 17, 1926). Thereafter, Congress chose to carry forward the substance of section 14b(4) into the bankruptcy law it enacted in 1938. Subsequently, the Congressionally authorized July 1973 Report of the Commission on the Bankruptcy Laws of the United States provided for continuing in effect the substance of section 14b(4). See Commission Report, 93rd Cong., 1st Sess., H. Doc. No. 93-137, Part II, page 132, lines 2-7. Congress deferred to the 1973 Commission Report by carrying the one year reach-back provision into the present Code in 1978 as section 727(a)(2)(A). See H. Rep. 95-595 at 384 (1977) and S.Rep. 95-989 at 98 (1978).[4]

When Congress wrote the one year reach-back provision into section 727(a)(2)(A) of the present Code, it did not write on a clean slate. As noted by this Court in *Emil v. Hanley,* 318 U.S. 515, 521 (1948), "[W]hen Congress wrote [a] four months proviso [into the then current Bankruptcy Act of 1938] it was not writing on a clean slate." Prior history of a statute guides our understanding of Congressional enactments. That Congress

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[4] The Congressional history does not provide an explicit explanation for the length of the reach-back period chosen by Congress, but none is needed because Congress has "great latitude" to make such choice in exercising its constitutional powers. *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566, 2579 (2012).

legislates in the context of the history is especially relevant in bankruptcy where numerous prior statutes had been in effect when the Code was passed in 1978. This Court has recognized that, except to the extent explicitly changed under the Code, Congress intended the pre-Code law to remain in effect. *BFP*, 511 U.S. at 544-45; *Bank of America, N.A. v. Caulkett*, 135 S.Ct. 1995, 2000 (2015) (reaffirming *Dewsnup v. Timm*, 502 U.S. 410, 419-20 (1992).).

Section 727(a) thus represents a clear continuation of a policy choice made by Congress over 100 years ago. Significantly, ever since its enactment of the Code in 1978, Congress has not changed its treatment of fraudulent transfer debt, although it had the opportunity to do so at each of the several times after 1978 when it amended the Code. See 6 *Collier on Bankruptcy* para 727.LH[1], p. 727-82 (16th ed. 2014). In light of the history of this provision, it would be odd to attribute to Congress an intent that section 523(a)(2)(A)'s "actual fraud" provision would be a basis to except from a debtor's discharge a fraudulent transfer debt that it intended would be discharged under section 727(a).

B. The Congressional policy regarding the discharge of fraudulent transfer debt makes sense because section 727(a) implements the central policy of equality of distribution to all creditors

Although this Court's precedents require deference to the policy choices of Congress, it is always reassuring when a plausible reason can be given for a policy choice. Such a reason exists here: equality of treatment of creditors, which this

Court recognizes as a central bankruptcy policy. *Begier v. I.R.S.*, 496 U.S. 53, 58 (1990) ("Equality of distribution among creditors is a central policy of the Bankruptcy Code."); *Union Bank v. Wolas*, 502 U.S. 151, 161 (1991) (recognizing that equality of distribution is a prime bankruptcy policy). Fraudulent transfers diminish the bankruptcy estate generally. By making a fraudulent transfer within the one year reach-back period grounds for denial of discharge it permits *all* creditors, each of whom is equally injured by the transfer, to benefit equally. This is because all creditors are free to pursue recovery of their debts if the transfer occurred within one year before the bankruptcy. In contrast, denial of dischargeability benefits only one creditor, thereby violating the Code's central policy of equality of distribution.

The Code itself, in section 548(a)(1)(A), makes clear that, by authorizing the *trustee* as the one to avoid a fraudulent transfer, for the benefit of *all* creditors, Congress would not have intended to allow *one* creditor, by means of section 523(a)(2)(A), to gain an advantage over all of the other creditors through excluding only his own claim from the debtor's discharge. Moreover, if one creditor were allowed so to use section 523(a)(2)(A), then every creditor could bring a proceeding under that provision, which would result in unnecessary duplicative litigation over the same issue, *i.e.*, whether the debtor made a fraudulent transfer of his property, rather than by decision in a single proceeding under section 727(a) governing the discharge of debt.

Because a fraudulent transfer impairs the collective rights of the creditors, fraudulent transfer debt is addressed exclusively by section

727(a). Under that provision, all creditors, not just one, would have the right after the bankruptcy to pursue collection on an equal footing of their fraudulent transfer claims that arose within one year before the bankruptcy. Using section 523(a)(2)(A) to except from the discharge a particular fraudulent transfer debt, however long ago it was incurred, simply does not fit within the structure of the Code regarding the discharge of such debt. The discharge of such debt is governed exclusively by section 727(a).

C. Congress' policy determination must be respected

In *Moriyama*, 13 F.2d at 117, a creditor objected to the grant of a discharge because the debtor had fraudulently encumbered his property by mortgaging it. In reversing the judgment below and directing the lower court to grant a discharge because the mortgages in question were made before the beginning of the four month reach-back period then in effect, the court stated:

> It would be sufficient, under that subdivision, if it appeared that the mortgages were executed at a time subsequent to the first date of the four months immediately preceding the filing of the petition; but the petition contains no such allegation, whereas the evidence shows without contradiction that the mortgages were in fact executed long prior to the beginning of the four-month period. *By declaring that a fraudulent transfer within the four-month period is a bar to a discharge, Congress by implication declared that a transfer prior to that date will have no*

> *such effect.* The objecting creditor seems to contend that a discharge may be denied *on moral or ethical grounds*, regardless of the statute; but this contention is wholly unfounded.

Id. (emphasis added).

In *In re Wakefield*, 207 Fed. 180 (N.D.N.Y. 1913), the court likewise discharged a debtor's fraudulent transfer debt where incurred more than four months prior to the bankruptcy, despite the judge's disagreement with Congress' discharge policy:

> Personally I would remove the limitation to the four months preceding the filing of the petition; but the courts do not legislate, and here there is no opening for a construction of the language.

Id. at 183.

Indeed, Congress' policy for the discharge of all but recently incurred fraudulent transfer debt is so strong that it did not limit it to chapter 7. In addition to chapter 7, when enacting the Code in 1978 Congress also made section 727(a)'s provision for discharging such debt applicable to an individual debtor in chapter 11 by means of section 1141(d)(3)(C) of the Code.

This Court holds that where a statute is clear, a court must enforce it as written, even though it may disagree with the policy choice made by Congress. As succinctly stated by this Court in *Florida Dept. of Revenue v. Piccadilly*, 128 S.Ct. 2326, 2338 (2008), "it is not for us to substitute our view . . . of policy for the legislation which has been passed by Congress." (quoting *United Parcel*

Service v. U.S. Postal Service, 604 F.3d 1370, 1381 n. 16 (2010) ("Our function as jurists is to require compliance with those statutes enacted by Congress. In this case it is not for us to substitute our view of postal policy for the legislation which has been passed by Congress.")

More recently, this Court expressed the same notion in *National Federation of Independent Business v. Sebelius*, 132 S.Ct. at 2569 ("Members of this Court . . . possess neither the expertise nor the prerogative to make policy decisions. Those decisions are entrusted to our Nation's leaders."). See also Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Col. L. Rev. 527,553 (1947) ("Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration."). Moreover, in a bankruptcy case decided scarcely a few months ago, this Court underscored its declination to depart from statutory text, stating: "But these lines were set by Congress, not this Court."). See *Bank of America, N.A. v. Caulkett*, 135 S.Ct. at 1999.

This rationale is rooted in the enumerated power of Congress to make all Laws, as conferred by Article I, section 8 of the Constitution. *Sebelius*, 132 S.Ct. at 2579. This Court has long read this Article of the Constitution to give Congress great latitude in excising its power, and has recognized that Congress is in the best position to make policy judgments. This is particularly so in bankruptcy cases in light of Congress' specific power under Article I, section 8, clause 4 of the Constitution to enact bankruptcy laws. Congress' judgment regarding the discharge of fraudulent transfer debt should thus be respected.

As this Court aptly stated in a similar context where it affirmed respect for a controversial Congressional bankruptcy policy judgment:

> Certainly, there may be compelling policy reasons for treating postpetition income tax liabilities as nondischargeable. But if Congress intended that result, it did not so provide in the statute. Given the statute's plain language, context, and structure, it is not for us to rewrite the statute particularly in this complex terrain of interconnected provisions and exceptions enacted over nearly three decades.

Hall v. United States, 132 S.Ct. 1882, 1893 (2012). This Court has left no doubt as to its respect for Congressional policy underpinning legislation. See *Piccadilly*, 128 S.Ct. at 2338; *Sebelius*, 132 S.Ct. at 2569.

This Court should respect the policy judgment made by Congress regarding the discharge of fraudulent transfer debt.

This Court left no doubt in *Law v. Siegel*, 134 S.Ct. 1188 (2014) that the Code must be applied according to its plain text, not "based on whatever considerations [the courts] deem appropriate." 134 S. Ct. at 1196. In that case, the debtor fabricated a loan and falsified a mortgage in order to increase the amount of his homestead exemption under section 522. Despite the debtor's egregious misconduct, this Court held that the bankruptcy courts lacked statutory authority to surcharge the debtor's exempt property for the legal costs incurred as a consequence.

This Court explained:

> We acknowledge that our ruling forces Siegel to shoulder a heavy financial burden resulting from Law's egregious misconduct, and that it may produce inequitable results for trustees and creditors in other cases. . . . For the reasons we have explained, it is not for courts to alter the balance struck by the statute. [citations omitted].

Id. at 1197-98. Likewise, in deciding whether fraudulent transfer debt would be discharged or survive bankruptcy, Congress made the choice that such a debt would survive only if it was incurred within one year before bankruptcy. Its choice is entitled to deference.

D. *Neal v. Clark* did not involve a fraudulent transfer of property, and by codifying the rule in *Neal v. Clark* when enacting section 523(a)(2)(A), Congress did not intend to allow fraudulent transfer debt to be excepted from a debtor's discharge

Contrary to Petitioner's contention, the codification of *Neal v. Clark* by Congress in enacting section 523(a)(2)(A) was not intended by it to bring fraudulent transfers within its "actual fraud" provision. A careful reading of *Neal v. Clark*, and of the Congressional history of that provision, demonstrates that the view held by Petitioner, and of the two Circuit Courts of Appeals on which it relies, is wrong.

When enacting section 523(a)(2)(A), Congress stated that it intended to codify the rule in *Neal v.*

Clark, 95 U.S. 704 (1877). See 124 Cong. Rec. H 32,392, 33,399 (Daily ed. Sept. 28, 1978). Representative Edwards, as floor manager of the 1978 bankruptcy legislation, there explained that "Subparagraph (A) [of proposed section 523(a)(2)] is intended to codify current case law, *e.g.*, *Neal v. Clark*, 95 U.S. 704 (1877), which interprets 'fraud' to mean actual or positive fraud rather than fraud implied in law " See 124 Cong. Rec. H11,095-11,096 (Daily ed. Sept. 28, 1978); 124 Cong. Rec. S17, 412-13 (Daily ed. Oct. 6, 1978) ("Subparagraph A [of section 523(a)(2)(A)] is intended to codify current case law which interprets fraud to mean actual or positive fraud rather than fraud implied in law.").

The *amici* submit that in codifying *Neal v. Clark* Congress did *not* bring fraudulent transfer debt within the "actual fraud" provision of section 523(a)(2)(A). This is because *Neal v. Clark* did *not* involve or even mention fraudulent transfer debt. Congress codified *Neal v. Clark* to evidence its intent that in cases to which section 523(a)(2)(A) *would* apply—to wit, cases *other* than those involving fraudulent transfers—positive fraud, not constructive fraud, had to be established.

Neal v. Clark involved the sale of property of a decedent's estate by its executor. The executor sold securities of the estate to a purchaser at a discounted price. It later appeared that the executor used the proceeds for his own personal purposes and was financially unable to make the estate whole for its loss. The executor's conduct was culpable, but not a fraudulent transfer to keep property beyond the reach of creditors. A successor executor tried to recover for the loss

from the purchaser, who then filed in bankruptcy. In that bankruptcy, the successor executor asserted that the debtor-purchaser should be held liable for the loss sustained by the decedent's estate. In holding for the debtor-purchaser, this Court concluded that the debtor-purchaser "was not chargeable with actual fraud, but in view of the circumstances attending the purchase, he had committed constructive fraud, which implicated him in the *devastavit*." *Neal v. Clark*, 95 U.S. at 707. Because *Neal v. Clark* did not involve a fraudulent transfer of a debtor's property to keep it beyond the reach of his creditors, the codification of *Neal v. Clark* cannot be understood as indicating Congressional intent to bring fraudulent transfer debt within the "actual fraud" provision of section 523(a)(2)(A).

Section 523(a)(2)(A) was enacted to provide for excepting from discharge debts for fraud *other than* those arising from fraudulent transfers. Whatever the scope of "actual fraud" under section 523(a)(2)(A) may be, it is clear that that provision was not enacted to except from a debtor's discharge fraudulent transfer debt incurred more than one year before his or her bankruptcy.

Accordingly, it is evident that when Congress approved the rule of *Neal v. Clark* when enacting section 523(a)(2)(A), Congress' *only* purpose was to make clear that, in a case involving a fraud of the type that *is* covered by section 523(a)(2)(A), a finding that the debtor committed an "actual fraud" must be based on positive fraud by the debtor, not on constructive fraud implied in law.

POINT III

THE *McCLELLAN* AND *LAWSON* CASES WERE WRONGLY DECIDED

Each of the Circuit Courts of Appeals that addressed the discharge of fraudulent transfer debt concluded, erroneously, as does Petitioner and its *amici* supporters, that an intentional fraudulent transfer falls within the "actual fraud" provision of section 523(a)(2)(A). In doing so, they failed to recognize that the discharge of such debt is governed exclusively by section 727(a). The leading decision that so erred is *McClellan*, 217 F.3d 890, which is the principal authority on which Petitioner relies.

In *McClellan*, the debtor's brother purchased machinery to be paid for in installments. After the brother defaulted and the seller commenced a collection suit to recover the unpaid sales price, the brother made a gratuitous "sale" for $10 of his own property to his sister, who resold it for a substantial amount. Two years later the sister commenced a chapter 7 bankruptcy case. The creditor brought a proceeding in the bankruptcy court to collect the unpaid price from the debtor-sister on the theory that the transfer to her was an intentional fraudulent transfer. The bankruptcy court dismissed the action on the ground that the debt was dischargeable, and the district court affirmed on the ground that a debt could not be excepted from a discharge as an "actual fraud" under section 523(a)(2)(A) absent a material misrepresentation, relying on *Field v. Mans*, 516 U.S. 59, 68 (1995). *McClellan*, 217 F.3d at 892.

In reversing, the Court of Appeals in *McClellan* held, erroneously, that a debt arising from a transfer made in a deliberate attempt to thwart the creditor's collection effort is excepted from the debtor's discharge as an "actual fraud" within section 523(a)(2)(A). According to that court's misunderstanding of the Code, a fraudulent transfer debt should be treated *the same* as all other debt, and thus may be excepted from a discharge as an "actual fraud" under section 523(a)(2)(A). Moreover, that court's "new debt" theory cannot change a fraudulent transfer debt, from which the debtor is entitled to be discharged under section 727(a), into a nondischargeable debt by means of section 523(a)(2)(A). See Point I.E.2 *supra*. That court, however, in its quest to prevent the debtor from using bankruptcy to discharge a debt for fraud, failed to comprehend that section 727(a), like its several predecessors, accorded *special* treatment to fraudulent transfer debt, by which such debt is discharged unless incurred within one year before bankruptcy. As the court stated in *McClellan*:

> Pressed at argument, [the debtor's] lawyer was unable to suggest any reason why the type of fraud presented by the allegations of McClellan's complaint should be treated differently from other types of fraud. The two-step routine that McClellan alleges and that we must take as true—in which debtor A transfers valuable property to B for nothing in order to keep it out of the hands of A's creditor and B then sells the property and declares bankruptcy in an effort to shield herself from liability for having colluded with A to defeat the rights of A's creditor—*is as blatant an*

> *abuse of the Bankruptcy Code as we can imagine. It turns bankruptcy into an engine for fraud.*

Id. at 893. (emphasis added).

It is understandable that a court may wish not to allow a person who committed a fraud ever to be freed by bankruptcy from the resulting debt. However, that is not what Congress wrote in section 727(a). If the fraudulent transfer is made within one year before bankruptcy, discharge is denied, which is no small consequence; otherwise, the debt is discharged. As shown above, what Congress actually wrote is to be accorded deference and its policy upheld, even if the court were to disagree with that policy. *McClellan's* fundamental error was to deny a discharge of fraudulent transfer debt *on moral and ethical grounds*, in disregard of clear Congressional policy expressed in statutory text. As stated in *Moriyama*:

> The objecting creditor seems to contend that discharge may be denied on moral and ethical grounds; regardless of the statute; *but this contention is wholly unfounded.*

13 F.2d at 118 (emphasis added).

To the *McClellan* court, the notion that fraud cannot be discharged in bankruptcy under any circumstances was so strong that, in its view, "[n]o learned inquiry into the history of fraud is required. . . ." *McClellan*, 217 F.3d at 893. That court's *a priori* zeal in *McClellan* to draw fraudulent transfer debt into section 523(a)(2)(A) may well have inhibited its own inquiry into the history, provisions, and structure of the discharge provisions of the Code. Having failed to focus on the

discharge provisions of the Code, that court erred in assuming that fraudulent transfer debt is covered as an "actual fraud" under section 523(a)(2)(A). *McClellan* was simply wrongly decided.

The Petitioner also relies heavily on *In re Lawson*, 791 F.3d 214 (1st Cir. 2015), cert. pending *sub nom. Sauer v. Lawson*, Docket No. 15-113. The fraudulent transfer debt in *Lawson*, as in *McClellan*, arose more than one year before the bankruptcy. Nevertheless, the court in *Lawson*, relying heavily on *McClellan*, likewise erroneously held that "knowingly accepting a fraudulent conveyance that the transferee knew was intended to hinder the transferor's creditors" may be excepted from the debtor's discharge under the "actual fraud" provision of section 523(a)(2)(A). In so holding, the Circuit Court in *Lawson* disapproved the bankruptcy court's reading of the *Lawson* Court's earlier decision in *Palmacci v. Umpierrez*, 121 F.3d 781 (1st Cir. 1997) as requiring a misrepresentation as an element of an "actual fraud." Significantly, however, *Lawson* failed to take note of the *specific* mention of *section 727(a)(2)* in the court's own decision in *Palmacci*, 121 F.3d at 786. Like *McClellan*, the court in *Larson* simply failed to comprehend that fraudulent transfer debt is governed by, and discharged under, section 727(a).

CONCLUSION

The discharge provisions in section 727(a) of the Code reflect an explicit legislative judgment. This judgment, made by Congress through the democratic process, in turn reflects the circumstances in which a debtor who is an individual should be placed upon emerging from bankruptcy,

namely unburdened by fraudulent transfer debt incurred more than one year before filing for bankruptcy relief.

Based on the foregoing, the order appealed from should be affirmed because the transfers in suit cannot be excepted under the "actual fraud" provision of section 523(a)(2)(A) from the discharge the Respondent may ultimately receive.

Respectfully submitted,

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